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REDACTED – FOR PUBLIC INSPECTION

November 12, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57**
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

Pursuant to the Modified Joint Protective Order in this proceeding,[1] Comcast Corporation hereby submits the enclosed redacted *ex parte* notice and presentation containing Highly Confidential Information. The **{{ }}** symbols denote where Highly Confidential Information has been redacted. The unredacted, Highly Confidential version of this filing was submitted to the Secretary's Office under separate cover and will be made available for inspection pursuant to the terms of the Modified Joint Protective Order.

Please contact the undersigned should you have any questions regarding this matter.

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[1] *Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Modified Joint Protective Order, DA 14-1464 (Oct. 7, 2014) ("Modified Joint Protective Order").

Respectfully submitted,

/s/ *Michael D. Hurwitz*
Michael D. Hurwitz
Counsel for Comcast Corporation

Enclosures

Comcast Corporation
300 New Jersey Avenue, NW
Suite 700
Washington, DC 20001

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Secretary
Federal Communications Commission
445 12th Street, S.W.
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Re: ***Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations,* MB Docket No. 14-57**
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch:

On November 7, 2014, Drs. Dennis Carlton, Mark Israel, and Bryan Keating, all of Compass Lexecon, Lynn Charytan of Comcast Corporation ("Comcast"), Art Burke of Davis Polk & Wardwell LLP, Michael Hurwitz of Willkie Farr & Gallagher LLP, and the undersigned met with the Commission staff copied below regarding the points made in the attached presentation, which summarizes Dr. Carlton's declaration filed in the above-captioned proceeding.[1] We also discussed points made in Dr. Israel's initial declaration[2] and Dr. Israel's reply declaration.[3]

In particular, Dr. Carlton discussed the substantial efficiencies that will result from the transaction, including improved wired, Wi-Fi, and home networks, faster broadband speeds, and improved services for business (especially, multi-location businesses).[4] Dr. Carlton noted that

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[1] *See* Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57 (Sept. 23, 2014) ("Opposition and Response"), Exhibit 3, Declaration of Dr. Dennis W. Carlton ("Carlton Decl.").

[2] *See* Applications and Public Interest Statement of Comcast Corporation and Time Warner Cable Inc., MB Docket No. 14-57 (Apr. 8, 2014), Exhibit 6, Declaration of Dr. Mark A. Israel ("Israel Decl.").

[3] *See* Opposition and Response, Exhibit 1, Reply Declaration of Dr. Mark A. Israel ("Israel Reply Decl.").

[4] *See* Carlton Decl. ¶¶ 5-8; Israel Reply Decl. ¶¶ 214-222; Israel Decl. ¶¶ 161-201.

Dr. Israel had calculated the significant increases in consumer welfare from even modest broadband speed upgrades in the acquired systems.[5] In response to questions, we confirmed that the benefits flowing from Comcast's enhanced ability to serve multi-location businesses more effectively post-transaction pertain not just to businesses with locations limited to both Comcast's and the acquired systems footprints today (e.g., a law firm with offices only in New York City and Washington, D.C.), but also to businesses with locations both in the combined company's footprint and outside of that footprint (e.g., a super-regional company with 100 locations, 80 of which Comcast will serve post-transaction versus 50 today). As Dr. Israel has previously explained, "to the extent the proposed transaction increases the percentage of locations that are within-footprint locations for any given bidding opportunity, it increases the chances that the combined firm can bid on and win that opportunity."[6]

Dr. Carlton also addressed OVD competition issues and emphasized that economic theory does not support the contention that the combined company will have an incentive to harm OVDs, and that the compelling empirical evidence of Comcast's interconnection contracts is inconsistent with claims that Comcast has the incentive or ability to foreclose OVDs or that Comcast has substantial bargaining power (especially as compared to the bargaining power of an OVD such as Netflix).[7] In response to questions, we explained that, beyond having no incentive to foreclose OVDs *directly* via interconnection (and no ability to do so, given the rich set of interconnection paths on which Comcast depends to provide broader interconnectivity),[8] the combined company will have no incentive or increased ability to foreclose OVDs through *indirect* means, such as via program carriage contracts with third-party programmers.

In particular, we noted that Comcast Content Acquisition executives have detailed, in a prior meeting with Commission staff, how Comcast's program carriage contracting practices do not and are not designed to prevent OVDs from licensing content. Comcast's MFN provisions do not preclude or limit programmers from making content available to OVDs (as evidenced by new robust licensing deals with OVDs announced almost daily). Nor has Comcast sought to impose broad ADM provisions in its contracts with programmers (e.g., those that go beyond limiting *free* online distribution for a short window).[9] While that has been true for several years, Comcast is also *bound* – today and for the next several years – by restrictions from the *NBCUniversal Order* against seeking contract provisions that would impede programmers'

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[5] *See* Carlton Decl. ¶ 6; Israel Reply Decl. ¶¶ 219-221.

[6] *See* Israel Decl. ¶ 142; *see also id*. ¶¶ 143-154 (detailing how business customers will benefit from the company's expanded geographical coverage and the reduction of coordination problems and double marginalization).

[7] *See* Carlton Decl. ¶¶ 10-15.

[8] *See* Israel Reply Decl. ¶¶ 44-56.

[9] *See* Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene H. Dortch, FCC, MB Docket No. 14-57, at 3-6 (Oct. 16, 2014) ("Program Carriage Ex Parte"); *see also* Opposition and Response at 169-72.

ability to distribute programming online, which will apply to the acquired systems.[10] We also explained that theories that Comcast has an incentive to disadvantage OVDs so that Comcast could earn greater profits by self-supplying substitute OVD content are not supported by market realities or record evidence.[11] Drs. Israel and Carlton also explained that such theories are not transaction-specific, hold only in the presence of restrictive assumptions about the presence of significant transaction costs and contracting inefficiencies, and – even if the theories were supported by the facts – would generate only speculative harms that are clearly limited and swamped by benefits from the transaction.

Finally, in response to questions, we noted that customer lifetime values ("CLVs") calculated by Comcast's Finance Department in October 2013 were the basis of Dr. Israel's discussion of CLVs in his reply declaration,[12] and the Comcast business presentation on which Dr. Israel relied (which details the methodology used) was submitted to the Commission as part of Dr. Israel's backup data.[13]

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

Senior Vice President,
Regulatory and State Legislative Affairs
Comcast Corporation

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[10] *See* Program Carriage Ex Parte at 6.

[11] *See* Israel Reply Decl. ¶ 122-129 (discussing, among other things, Comcast's lack of plans to offer online video offerings outside of its footprint, and the fact that robust third-party OVDs are complementary both to Comcast's broadband business and to NBCUniversal's content licensing business); *see also* Opposition and Response at 198-199.

[12] *See* Israel Reply Decl. ¶ 159 & n.48 (discussing CLV data).

[13] *See* Letter from Francis M. Buono, Willkie Farr & Gallagher LLP, Counsel for Comcast Corporation, to Marlene H. Dortch, FCC, MB Docket No. 14-57 (Sept. 29, 2014) (enclosure supplying backup data, including October 2013 CLV presentation). The October 2013 CLV presentation was also submitted as part of Comcast's Response to Information Requests. *See* Letter from Kathryn A. Zachem, Comcast Corp., to Marlene H. Dortch, FCC, Response to Request, Exhibit 74.5 (Sept. 11, 2014); *see also* Letter from Kathryn A. Zachem, Comcast Corporation, to Marlene H. Dortch, FCC, MB Docket No. 14-57 (Sept. 18, 2014) (enclosure supplying backup data, including October 2013 CLV presentation).

cc: Allen Barna
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Enclosure

Economic Analysis of the Comcast-Time Warner Cable Transaction

Dennis Carlton

November 7, 2014

Large Efficiencies

- Substantial economic efficiencies from proposed transaction
  - Increased geographic scale
  - Combination of complementary skills and products
- Benefits flowing from efficiencies include improved wired, Wi-Fi, and home networks, faster broadband speeds, and improved services for business (esp., multi-location businesses)
- Large and unrefuted efficiencies overwhelm small and speculative harms

No Horizontal Overlap

- No traditional horizontal concerns for consumers of broadband: The market areas of Comcast and TWC do not overlap

- The proposed transaction does not alter the available sources of broadband supply to consumers

Claims of Harm are Not Supported by Economic Theory and are Contradicted by Evidence

- Two potential theories of harm:
  - **Foreclosure theories**: The firm will use its market position to harm OVDs (e.g., Netflix) in order to benefit its video products
  - **Bargaining theories**: The firm will use its larger size to negotiate better prices in interconnection agreements with third parties
- As explained on the following slides:
  - <u>Economic theory</u> is, at best, ambiguous as to whether these concerns are valid
  - <u>Empirical evidence</u> is not consistent with claims that there will be significant harms

Claims of Harm are Not Supported by Economic Theory

- Foreclosure to shift business from broadband to video is not economically rational
- No incentive to foreclose edge providers
  - A foreclosure strategy would not yield Comcast market power over consumers with whom it does not currently deal or have market power; and
  - Comcast and edge providers can negotiate directly and flexibly
- No difference in pre- and post-merger incentives to engage in such behavior
- Bargaining theory is ambiguous in its predictions about the impact of size

Claims of Harms are Contradicted by Empirical Evidence

- Comcast’s long-term agreements with Netflix **{{ }}** illustrate:
  - Tiny effects from bargaining power, if any
  - Long-term agreements guarantee high-quality interconnection with **{{ }}**
  - Long-term agreements with **{{ }}** substantially reduce any incentive to harm *other* OVDs, because now the benefits of doing so must be shared with those already protected by contract